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August 6, 2008

Jeff S. Jordan, Esq.
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

: :

Re: MUR 6031

Dear Mr. Jordan:

This letter is the response on behalf of the Hagan Senate Committee, Inc. ("the Hagan Campaign" or "the Campaign"), and Linda S. Cary, as treasurer, to the complaint filed against them by the North Carolina Republican Party. The complaint also gratuitously attempts to add the candidate as a respondent. We ask that the complaint be dismissed and no action be taken against any of the named respondents.

The complaint alleges three violations of the federal campaign finance laws by the Hagan Campaign:

- The receipt and improper disclosure of excessive contributions;
- The failure to timely file 48-hour contribution reports; and
- The failure to fully disclose contributor information.

Each of these allegations is discussed in further detail below. As the Commission is aware, complaints containing dramatic hyperbole of this nature are filed regularly for political effect — the allegations are, in fact, minor and the Commission should not reward such obvious political use of the complaint system by pursing any action against the respondents.

Jeff S. Jordan, Esq. August 6, 2008 Page 2

#### Allegation #1: Excessive Contributions

The complaint spends most of its verbiage and exhibits attempting to make the claim that 94<sup>1</sup> contributions received by the Hagan Campaign were excessive and were incorrectly reported. These allegations are false. For the majority of the contributions cited by the complaint, one of the following circumstances is true:

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- The contribution in question was designated by the contributor. For example, on many of
  the contributor cards distributed by the Hagan Campaign in connection with events, the
  contributor was asked to sign a statement that the contribution was allocated between the
  primary and general elections. See Chart in Exhibit A and a sample of such a designation
  at Exhibit B.<sup>2</sup>
- The contributors made contributions by separate checks. See Chart in Exhibit A and a sample of such a contribution at Exhibit C.
- The contribution was presumptively reattributed or redesignated as provided for in the FEC's regulations (and acknowledged as permissible in the complaint itself). The Campaign's processing of such contributions met the Commission's requirements for presumptive reattribution or redesignation, including the 60-day notification to the contributor. See Chart in Exhibit A and a sample of such notifications in Exhibit D.

In each of these instances, the resttribution or redesignation occurred during the same reporting period. There was, therefore, no requirement that any subsequent report disclose on any additional information about the resttribution or redesignation.

In pulling together the information for preparing the response to this complaint, the Campaign did discover that it did not have copies of presumptive reattribution or redesignation letters for a few of the contributions. See Chart in Exhibit A. In further investigating these contributions, it was discovered that the majority of these contributions fell into two categories: contributions for which an oral confirmation of the reattribution/redesignation was obtained, but no follow-up letter was sent, or a copy of the follow-up letter could not be located. It is clear that the Campaign had a policy in place to properly handle its presumptive reattributions and

<sup>&</sup>lt;sup>1</sup> In discussing the alleged excessive contributions, the complaint uses the figure 97, but the copy received by the Campaign attaches exhibits for only 94 contributions (see complaint, Exhibits A and B). The remaining exhibits deal with the other allegations in the complaint. The Hagan Campaign's response, therefore, can only address the 94 contributions shown in the exhibits.

<sup>&</sup>lt;sup>2</sup> In the interest of limiting the paper and copying required to respond to this complaint, the Hagan Campaign has not provided copies of all designations or letters in its possession. Should the Commission wish to see all copies, the Campaign would be happy to provide them.

Jeff S. Jordan, Esq. August 6, 2008 Page 3

redesignations, but in a few cases the policy was not strictly adhered to. (Some of these cases involved family members of the candidate.)

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In order to avoid these circumstances in the future, the Campaign has adopted new, more stringent procedures to ensure that no contributions that require a written follow-up will be missed. All staff members responsible for handling these contributions have been trained in the new procedures and the new procedures have been implemented for all contributions.

#### Allegation #2: Late 48-Hour Reports

The complaint alleges two instances of untimely 48-hour notices: one filed April 21 and a second filed on April 27.

In the first instance, the report for the three contributions was, in fact, not timely. These contributions were received on Thursday and Friday, April 17 and 18. The reports, to be timely, should have been filed on Saturday and Sunday, April 19 and 20. Instead, the report for the contributions was filed on Monday, April 21. The simple explanation is that the Campaign misunderstood the 48-hour reporting requirements, believing that such reports did not need to be filed on weekends. The report was promptly filed on the next business day. The Campaign subsequently was made aware that reports must be filed on even on weekends, and no other weekend reports have been or will be missed.

The two contributions reported on April 27, while at first glance appearing to be untimely filed, were, in fact, timely filed. Both of these contributions were received as a result of a joint fundraising committee distribution. The contributions were received by the joint fundraising committee on April 24, but were not distributed to the Campaign until April 25. Unfortunately, the Campaign entered the date of receipt by the joint fundraising committee on the 48-hour report, resulting in the misleading impression that the contributions were not timely filed on the April 27 48-hour report. In reality, the Campaign filed the 48-hour report within the required period after receipt by the Campaign on April 25.

#### Allegation #3: Missing Contributor Information

The final allegation in the complaint is that the Hagan Campaign did not meet the "best efforts" requirements to collect and disclose contributor information. The Hagan Campaign complies with the requirements of the Commission's best efforts regulations, but is not successful in every case in obtaining the information from the contributor. As shown in the contributor cards already provided in response to Allegation #1, the Campaign includes the required disclaimer language on its written requests for contributions. See Exhibit B. When the information is not provided, or a check is received as a result of a phone solicitation or without evidence of a specific solicitation, the Campaign follows up with a letter or with a call to the contributor. See

Jeff S. Jordan, Esq. August 6, 2008 Page 4 : :

sample of such call logs and letters at Exhibit B. The Campaign also attempts to supplement information from other public records, such as prior FEC reports. In almost every case, the information is sought and, if available, obtained, before the next report is filed.

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### Conclusion

We believe that the above addresses all of the allegations in the complaint and that there are inadequate grounds for the Commission to proceed against the Campaign. Should you have any questions or need additional information, please do not heaitate to contact the undersigned.

Very truly yours,

Marc Erik Elias MBB:gh

Attachments (Exhibits A-E)

# **EXHIBIT B**

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Exhibit 4 - Boulton \$2,300.00 Year End 2007 Page 16-C Year End 2007 Page 17-A

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### HAGAN SENATE COMMITTEE INC Year End FEC Report

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Exhibit 7 - Capps \$2,300.00 Year End 2007 Page 25-A Year End 2007 Page 25-B

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# **EXHIBIT C**

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### HAGAN SENATE COMMITTEE INC Year End FEC Report

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Exhibit 16 - Ellison \$2,300.00 Year End 2007 Page 45-B Year End 2007 Page 45-C

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# **EXHIBIT D**

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Exhibit 1 - Atala \$2,300.00 Year End 2007 Page 9-A Year End 2007 Page 9-B

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Exhibit 6 - Brenner \$2,300.00 Year End 2007 Page 19-C Year End 2007 Page 20-A Year End 2007 Page 20-B

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Exhibit 10 - Carter \$2,300.00 Year End 2007 Page 29-B Year End 2007 Page 30-A

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# HAGAN SENATE COMMITTEE INC Year End FEC Report

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Exhibit 38 - Phillips \$2,300.00 Year End 2007 Page 100-C Year End 2007 Page 101-A • •

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